

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

NANCY L. BODDICKER,

Plaintiff,

vs.

**AMERICAN HONDA MOTOR CO.,
INC.,**

Defendant.

No. C10-1018

FINAL JURY INSTRUCTIONS

FINAL INSTRUCTION NO. 1

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

FINAL INSTRUCTION NO. 2

The fact that American Honda Motor Co., Inc. is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

Since a corporation can act only through its officers, employees, or other agents, any act of an officer, employee, or other agent of American Honda, in the performance of that person's duties, is held in law to be an act of American Honda.

FINAL INSTRUCTION NO. 3

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claims rely upon that fact. The party who has the burden of proving a fact must prove it by the greater weight or preponderance of the evidence. To prove something by the greater weight or preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that issue has been proved.

The greater weight or preponderance of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term "proof beyond a reasonable doubt." That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

FINAL INSTRUCTION NO. 4

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider a witness' intelligence, the opportunity a witness had to see or hear the things testified about, a witness' memory, any motives a witness may have for testifying a certain way, the manner of a witness while testifying, whether a witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

FINAL INSTRUCTION NO. 5

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

FINAL INSTRUCTION NO. 6

In these instructions I will be using the term “fault.” In this case, “fault” may include a breach of an implied warranty, negligence, or failing to exercise reasonable care for one’s own safety. These terms will be explained in the instructions which follow. The mere fact an accident occurred or Boddicker was injured does not mean any party was at fault.

FINAL INSTRUCTION NO. 7

Boddicker claims American Honda was at fault by breaching an implied warranty of merchantability. When the seller is a merchant, and a contract for the sale of goods exists between the buyer and seller, there is an implied warranty that the goods shall be merchantable.

To recover on her claim that American Honda breached an implied warranty of merchantability, Boddicker must prove all of the following propositions:

1. American Honda was a merchant at the time it sold the 2007 Honda VT750 Shadow motorcycle; and
2. The motorcycle was not merchantable; and
3. Notice was given to American Honda; and
4. The lack of merchantability was a cause of Boddicker's damages; and
5. The amount of damages.

If Boddicker has failed to prove any of these propositions, then she is not entitled to damages on this claim. If Boddicker has proved all of these propositions, then you will consider the defense of comparative fault, as explained in Instruction No. 9.

FINAL INSTRUCTION NO. 8

Regarding element No. 1 of Instruction No. 7, American Honda admits that it was a “merchant” for these purposes.

Regarding element No. 2 of Instruction No. 7, “merchantable” means goods that pass without objection in the trade under the contract description, and are fit for the ordinary purposes for which such goods are used.

Regarding element No. 3 of Instruction No. 7, American Honda admits that it was given proper notice.

FINAL INSTRUCTION NO. 9

American Honda claims Boddicker was at fault in two particulars:

- 1. Negligently maintaining and operating the motorcycle.**
- 2. Failing to exercise reasonable care for her own safety.**

These grounds of fault are explained to you in instructions which follow.

FINAL INSTRUCTION NO. 10

To prove its defense that Boddicker was negligent, American Honda must prove both of the following propositions:

1. Boddicker was negligent in one or more of the following ways:
 - a. Failing to properly maintain her motorcycle as directed by the owner's manual; or
 - b. Failing to maintain control of her motorcycle; or
 - c. Failing to drive on the right half of the road; or
 - d. Failing to maintain proper lookout.
2. Boddicker's negligence was a cause of Boddicker's damages.

If American Honda has failed to prove either of these propositions, then American Honda has not proved its defense. If American Honda has proved both of these propositions, then you will assign a percentage of fault to Boddicker, and include Boddicker's fault in the total percentage of fault found by you in answering the special verdicts.

FINAL INSTRUCTION NO. 11

Regarding element number 1 of Instruction No. 10, “negligence” means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. “Negligence” is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

Regarding element number 1(b) of Instruction No. 10, a driver must have his or her vehicle under control. It is under control when the driver can guide and direct its movement, control its speed, and stop it reasonably fast.

A violation of this duty is negligence.

Regarding element number 1(c) of Instruction No. 10, a vehicle shall be driven on the right half of the road on all roads of sufficient width except when an obstruction makes it necessary to drive to the left of the center of the road. Any person doing so shall yield the right-of-way to all vehicles traveling in the opposite direction upon the open portion of the road within a distance which is an immediate danger.

A violation of this law is negligence.

Regarding element number 1(d) of Instruction No. 10, “proper lookout” is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. It includes being aware of the operation of the driver’s vehicle in relation to what the driver saw or should have seen.

A violation of this duty is negligence.

FINAL INSTRUCTION NO. 12

A party is required to exercise reasonable care for their own safety. This means that if, in the exercise of ordinary care under the circumstances, a party could have taken some particular action after an act of fault of another party, in order to avoid an injury, then they are under a duty to take such action.

In order to prove its defense that Boddicker failed to exercise reasonable care for her own safety, American Honda must prove both of the following propositions:

1. Boddicker unreasonably failed to take action to avoid an injury by continuing to ride the motorcycle after she became aware that she was having difficulty with the operation of the clutch.
2. Boddicker's failure to exercise reasonable care was a cause of Boddicker's damages.

If American Honda has failed to prove either of these propositions, then American Honda has not proved its defense. If American Honda has proved both of these propositions, then you will assign a percentage of fault to Boddicker, and include Boddicker's fault in the total percentage of fault found by you in answering the special verdicts.

FINAL INSTRUCTION NO. 13

Regarding element No. 4 of Instruction No. 7 and element No. 2 of Instruction Nos. 10 and 12, the conduct of a party is a cause of damage when the damage would not have happened except for the conduct. There can be more than one cause of an injury or damage. When the fault of two or more separate parties is so related to an event that their combined fault, when viewed as a whole, is the cause of the event without which the event would not occur, then the fault of each party may be a cause.

FINAL INSTRUCTION NO. 14

Regarding element number 5 of Instruction No. 7, if you find Boddicker is entitled to recover damages, then it is your duty to determine the amount. In doing so, you shall consider the following items in determining an amount which will fully compensate Boddicker for the damages she incurred.

- 1. Past Medical Expenses. The reasonable cost of necessary hospital charges, doctor charges, prescription expenses, and other necessary medical services from the date of injury to the present time. In determining the reasonable cost of these items, you may consider the amount charged, the amount actually paid, or any other evidence of what is reasonable and proper for such medical expense.**
- 2. Past Loss of Earnings. The reasonable value of lost wages from the date of injury to the present time.**
- 3. Future Loss of Earning Capacity. The present value of loss of future earning capacity. Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.**
- 4. Past Loss of Function. Loss of function of the mind and body from the date of injury to the present time. Loss of function is the inability of a particular part of the mind or body to function in a normal manner.**
- 5. Future Loss of Function. The present value of future loss of function of the mind and body.**
- 6. Past Physical and Mental Pain and Suffering. Physical and mental pain and suffering from the date of injury to the present time. Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.**
- 7. Future Physical and Mental Pain and Suffering. The present value of future physical and mental pain and suffering.**

(CONTINUED...)

FINAL INSTRUCTION NO. 14 (Cont'd)

The amount you assess for physical and mental pain and suffering in the past and future, loss of future earning capacity, or loss of function of the mind and body in the past and future, cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by a party as provided by the evidence.

Future damages must be reduced to present value. "Present Value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate Boddicker for future losses.

A Standard Mortality Table indicates the normal life expectancy of individuals who are the same age as Boddicker is 24 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about Boddicker's health, habits, occupation, and lifestyle, when deciding the issue of future damages.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

FINAL INSTRUCTION NO. 15

Damages may be the fault of more than one person. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of Boddicker and American Honda, and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each party's fault contributed to the damages.

After you have compared the conduct of all parties, if you find Boddicker was at fault, and her fault was more than 50% of the total fault, then Boddicker cannot recover damages. However, if you find Boddicker's fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of Boddicker's fault.

In assessing percentages of fault, or arriving at an item of damage, you cannot arrive at a figure by taking down the estimate of each juror and agreeing in advance that the average of those estimates shall be your percentage of fault or item of damage.

FINAL INSTRUCTION NO. 16

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed

(CONTINUED...)

FINAL INSTRUCTION NO. 16 (Cont'd)

on the verdict, your foreperson will fill in the form, sign and date it, and advise the court security officer that you are ready to return to the courtroom.

DATED this 15th day of December, 2011.



JON STUART SCOLES
UNITED STATES MAGISTRATE JUDGE
NORTHERN DISTRICT OF IOWA